

EXHIBIT D

Subject: FYI-Discovery
From: Clif Bennette (cbennette1@verizon.net)
To: kberg@gouldberglaw.com;
Date: Tuesday, October 23, 2018 4:39 PM

Kim,

Just so you're aware, Diane mailed the notarized documents (with original signatures) to me today. As soon as received, I will drive to your office and hand-deliver. I assume the documents can just be dropped off. If that is not the case, please let me know.

Best regards,

Clif

Subject: Re: Civitano v. PamRob, et al.
From: Kim Berg (kberg@gouldberglaw.com)
To: cbennette1@verizon.net;
Date: Monday, October 22, 2018 10:27 AM

You can get a NY notary at any bank

Kim Berg, Esq.
Gould & Berg, LLP
222 Bloomingdale Road, Suite 304
White Plains, NY 10605
Ph. 914-397-1050 ext. 233
Fax 914-397-1051
kberg@gouldberglaw.com

On Monday, October 22, 2018, 8:51 AM, Clif Bennette <cbennette1@verizon.net> wrote:

Kim,

I've only found a Ct notary. She has authority to notarize some, not all, NY docs. Are federal court (and you) OK with a Ct notary?

Regards,

Clif

From: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Reply-To: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Date: Tuesday, October 16, 2018 at 10:53 AM
To: Clif Bennette <cbennette1@verizon.net>
Subject: Re: Civitano v. PamRob, et al.

Clif,

I am following up to see what the status is at this point. Please let me know when I can expect all of the outstanding discovery responses. I am concerned that a lot of time has passed and I need to bring this to the attention of Judge Seibel if it is not going to be completed for some time.

Thank you,
Kim

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From: Clif Bennette <cbennette1@verizon.net>
To: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Sent: Friday, October 12, 2018 8:57 AM
Subject: Re: Civitano v. PamRob, et al.

Kim,

I haven't forgotten, I'm struggling with migraines. Will complete as soon as able.

Clif

From: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Reply-To: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Date: Wednesday, October 3, 2018 at 9:41 PM
To: Clif Bennette <cbennette1@verizon.net>
Subject: Re: Civitano v. PamRob, et al.

Clif,

I am looking for the complete responses to my discovery requests as indicated in my prior email to you of September 19, 2018 (see below in the email chain accompanying this email). Given your medical issue I am willing to extend the time to correct this and supply complete responses by one additional week to 10/10/18.

Thank you,
Kim

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From: Clif Bennette <cbennette1@verizon.net>
To: "Kim Berg, Esq." <kberg@gouldbergglaw.com>
Sent: Wednesday, October 3, 2018 6:18 PM
Subject: Re: Civitano v. PamRob, et al.

Kim,

I'm sorry. It was "nip and tuck" for a few days but I'm better now so should have called or emailed.

It seems a discovery document from another case was sent. I apologize for that.

As a general rule, everyone wants what is due ASAP and that is my assumption here. But sometimes corrected discovery is just as good if received later rather than ASAP. Please let me know if that is the case so I can plan accordingly.

Best regards,

Clif

PS There appears to be a problem with email address clif@bennettelaw.com. So, please use my personal account <cbennette1@verizon.net>. Thanks.

From: "Kim Berg, Esq." <kberg@gouldbergglaw.com>
Date: Wednesday, October 3, 2018 at 4:32 PM
To: Clif Bennette <cbennette1@verizon.net>
Subject: Fw: Civitano v. PamRob, et al.

Clif,

I did not hear back from you in response to my email below. Please advise of the status of your ability to provide me with corrected discovery.

Thank you
Kim

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----- Forwarded Message -----

From: "Kim Berg, Esq." <kberg@gouldberglaw.com>
To: Clif Bennette <cbennette1@verizon.net>
Sent: Monday, October 1, 2018 12:16 PM
Subject: Re: Civitano v. PamRob, et al.

Clif,

I hope you are feeling better. Please let me know your intentions with completing the discovery and correcting the issues.

Thank you,
Kim

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From: Clif Bennette <cbennette1@verizon.net>
To: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Sent: Saturday, September 29, 2018 1:16 PM
Subject: Re: Civitano v. PamRob, et al.

Kim,

I had planned to cure the discovery issues this weekend but am currently medically unable. If I am better tomorrow, I believe I will meet our 1 week deadline. Otherwise, I'd like to take a few extra days (depending on when I'm recover).

Clif

From: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Reply-To: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Date: Tuesday, September 25, 2018 at 4:59 PM
To: Clif Bennette <cbennette1@verizon.net>
Subject: Re: Civitano v. PamRob, et al.

Thank you

Kim Berg, Esq.
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From: Clif Bennette <cbennette1@verizon.net>
To: Kim Berg <kberg@gouldberglaw.com>
Sent: Tuesday, September 25, 2018 4:49 PM
Subject: Re: Civitano v. PamRob, et al.

Kim,

Per our conversation today, I briefly reviewed the objections below. To the extent I'm able, I will address all your concerns by 10/3. Regarding the Settlement Conference, we are confirmed for 10/30 at 2:30 pm.

Best regards,

Clif

From: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Reply-To: "Kim Berg, Esq." <kberg@gouldberglaw.com>
Date: Wednesday, September 19, 2018 at 3:53 PM
To: Clif Bennette <cbennette1@verizon.net>, Cliffith Bennette <clif@bennettelaw.com>
Subject: Civitano v. PamRob, et al.

Clif,

I am writing per the discovery practices order to raise disputes and objections that I have with respect to the discovery you have served upon me thus far. These defects are noted below. Per the Procedures for Discovery Disputes set forth in the Civil Case Discovery Plan and Scheduling Order, if we do not resolve these issues within the next five business days, I will write to Judge Seibel.

1. We have not received responses to Defendants' First Request for Production of Documents.

2. The "interrogatories" that you emailed on September 17, 2018 are not valid for each of the following reasons: a) do not have a caption, b) do not comply with the FRCP Rule 33 as they are not verified by Plaintiff, c) are not signed by you as required by FRCP Rule 11 d) you have not provided all of the information required by Local Rule 26.3 with regard to each of the individuals identified in that you are required to provide home and business address information; and e) in response to request 25 I am unclear what you mean by mandatory names already supplied so please amend the interrogatory answer to identify specifically the document to which you are referring.

3. I am unclear what the Update Rule 23 List is that you emailed on September 17, 2018. Is this an amended Rule 26 Disclosure (not Rule 23 as indicated)? If so, then it too needs to have a caption as such and is defective in that it is not signed by you per Rule 11. I also note that your original Rule 26 Disclosure was not signed as required by Rule 11 so please provide with a signed copy.

4. Your email of September 17, 2018 "Affidavit of Devon Morris" the document attached is not an affidavit. That being said, what is the attachment being provided for? Is this another amendment to the Rule 26 Disclosure? Please clarify and amend your disclosure accordingly if you feel it is necessary.

5. Due to the Yom Kippur, my client is unavailable until tomorrow so I will let you know as soon as I hear from her about the proposed October 30th date for a settlement conference with Judge Davison.

6. Finally, I must note my concerns with the manner in which you attempted to contact the Court yesterday by email to Alice Cama, who previously was Judge Seibel and not Judge Davison's assistant and has retired. In addition, as I relayed to Lori from Judge Davison's chambers during our conference call with her yesterday, you did not accurately convey information about the dates and requested adjournments. For the record, and I repeat what I said yesterday in the call with Lori, you made a representation in writing to the Court on August 24, 2018 that September 25th was a date that we could select to adjourn the conference to AND you affirmed that in a verbal conversation with me as well. Based on that representation in your letter to the Court, my client modified an important scheduling conflict on 9/25 to then find out that your client was not available because, according to you, you never checked with her. I am outraged by the manner in which this was handled and the significant inconvenience you have caused to both me and my client, not to mention the Court. Thus, I too must agree with Lori from Judge Davison's chambers and request that before the conference is adjourned to another date you make sure that your client is available.

Thank you,
Kim

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Subject: RE: Civitano v. PamRob
From: cbennette1@verizon.net (cbennette1@verizon.net)
To: kberg@gouldberglaw.com;
Date: Thursday, November 1, 2018 4:29 PM

Do not accuse me of anything. It's unprofessional and obnoxious. We had a nice conversation after this email was sent so I'll ignore for now, but be courteous or be gone.

Clif Bennette, Esq.

From: Kim Berg, Esq. <kberg@gouldberglaw.com>
Sent: Thursday, November 1, 2018 12:09 PM
To: Clif Bennette <cbennette1@verizon.net>
Subject: Civitano v. PamRob

Clif,

Before you hung up on me and refused to continue to talk, I was attempting to express that if you are interested in continuing to talk I am willing to do so. However, given the fact that you continually try to increase your offer after putting a number on the table (which you did at the mediation and at now) it makes it very difficult for me to get my client to the table because you are a moving target.

Since our conversation just now was cut off by you mid sentence, please put in writing to me the bottom line your client will accept. I am a firm believer in good faith negotiations and your statements to me on the phone today gave me three different numbers. As I told you, I gave you the top number the Judge was able to get out of us on Tuesday. However, I would gladly take back your latest offer to my client once you tell me what it is. My understanding from Judge Davison is that you were at a number under \$45,000. To tell me a number above that is not going to move the matter forward. Thus I would appreciate a written reply to this email with a good faith offer below \$45,000 as per what the Judge told us Tuesday. I can then communicate that number to my client and get back to you by close of business today.

All of that being said, I see that it is likely your intention to proceed with litigation at this point. As you know, there are several outstanding issues pertaining to the written discovery which I will now have to write to Judge Seibel about. You still have not provided interrogatory responses or a valid rule 26 disclosure. In addition, we need to schedule the Plaintiff's deposition which I previously noticed and adjourned based on the notion we would try to settle the case before expending those resources.

Thank you,

Kim

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